

## **REMARKS**

In the Final Office Action, the Examiner rejected claims 1-28. In view of the following remarks, Applicants respectfully request reconsideration and allowance of all pending claims.

### **Rejections Under 35 U.S.C. § 101**

In the Final Office Action, the Examiner rejected claims 26-28 under Section 101 as being directed to non-statutory subject matter. More specifically, the Examiner stated:

Claim 26 recites “A computer program provided on computer readable medium and containing computer executable instruction for authentication and log-in to a system, comprising: at least one computer readable medium; and computer readable codes stored on the at least one medium for performing ...”. Claim 26 is merely stored so as to be read or outputted by a computer without creating any functional interrelationship, either as part of the stored data or as part of the computing processes performed by the computer, and such descriptive material alone doesn’t impart functionality either to the data as so structured, or to the computer. Therefore, claim 26 recites non-statutory subject matter.

Claim 27 and 28 have limitation that are similar to those of claim 26, thus they are rejected with the same rationale applied against claim 26 above.

Final Office Action, page 2.

Applicants respectfully traverse this rejection. According to the Supreme Court, Congress intended statutory subject matter to “include anything under the sun that is made by man.” *Diamond v. Chakrabarty*, 447 U.S. 303, 308-09; 206 U.S.P.Q. 193, 197 (1980). Indeed, exclusions of statutory subject matter are limited to laws of nature, natural phenomena and abstract ideas. *See Diamond v. Diehr*, 450 U.S. 175, 185; 209 U.S.P.Q. 1, 7 (1981). Other than these specific exceptions, therefore, nearly anything man made is statutorily patentable subject matter under 35 U.S.C. § 101.

With particular regard to computer programs, if they are in a tangible medium, they are considered patentable subject matter under Section 101. *See In re Beauregard*, 53 F.3d 1583 (Fed Cir. 1995). Indeed, the *Beauregard* case directly states that, “computer programs embodied in a tangible medium...are patentable subject matter under 35 U.S.C. §101.” *Id.* Accordingly, because independent claim 26 and 27 recites *inter alia*, “A computer program provided on computer readable medium and containing computer executable instructions,” Applicants assert that claims 26 and 27 are directed to patentable subject matter under 35 U.S.C. §101.

Furthermore, Applicants note that the Manual of Patent Examining Procedure (M.P.E.P.) sets forth the standard to be applied to computer-related subject matter. Specifically, the M.P.E.P. defines a class of subject matter referred to as “functional descriptive material,” which is described as “data structures and computer programs which impart functionality when employed as a computer component.” M.P.E.P. § 2106.01. Regarding the patentability of functional descriptive material, the M.P.E.P. states “[w]hen functional descriptive material is recorded on some computer readable medium, it becomes *structurally and functionally* interrelated to the medium and *will be statutory* in most cases since use of technology permits the function of the descriptive material to be realized.” (Emphasis added). In this respect, the claims again clearly recite patentable subject matter. To the extent that functionally descriptive material is included in the claims, it is structurally and functionally interrelated to recited structures, such as the wireless biometric device (and its wireless proximity detection device), as recited in claims 26 and 27, for example.

In view of the foregoing, Applicants respectfully request the Examiner withdraw the rejection under 35 U.S.C. § 101 and allow the claims.

### **Rejections Under 35 U.S.C. § 102**

In the Final Office Action, the Examiner rejected claims 1-3, 5, 23, and 26 under 35 U.S.C. § 102 as being anticipated by Hamid et al., U.S. Patent No. 6,848,052 (hereinafter “Hamid”); and rejected claims 15-18, 20, 21, 25, and 28 under 35 U.S.C. § 102(e) as being anticipated by Uchida, U.S. Patent No. 6,751,734 (hereinafter “Uchida”). Applicants respectfully traverse these rejections. A *prima facie* case of anticipation under 35 U.S.C. § 102 requires a showing that each limitation of a claim is found in a single reference, practice or device. *In re Donohue*, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

#### ***Deficiencies of the Rejection base on Uchida***

Independent claims 15, 20, 25, and 28 all generally recite authentication of the user at the wireless biometric device, and not at the system in which the user is subsequently logged in. In contrast, Uchida discloses authentication of user separate from the portable unit 1. *See* Figure 1. Indeed, quite the opposite, it is the Uchida receiving system that is the Uchida authentication executing device 2. *See* col. 9, lines 32-45; col. 10, lines 7-11; Figure 1. Therefore, Uchida cannot anticipate claims 15, 20, 25, and 28, or their dependent claims. Accordingly, Applicants respectfully request the Examiner withdraw the foregoing rejection and allow the claims.

#### ***Deficiencies of the Rejection base on Hamid***

Rejected claims 1-3, 23, and 26 generally recite log-in to a system or logging the user into the system. In contrast, Hamid merely discloses accessing a device (e.g., accessing functions of a device), and does not disclose the step of functionally logging into a receiving system, as claimed. Indeed, Hamid does not teach that a user is logged into a system but simply accesses a device and its functions (or a portion of the functions of the device). Therefore, Hamid cannot anticipate claims 1-3, 23, and 26. Accordingly, Applicants respectfully request the Examiner withdraw the foregoing rejection and allow the claims. Note, if agreeable to the Examiner, Applicants may be willing amend these

rejected claims to further clarify this distinguishing feature to place these claims in condition for allowance.

**Claim Rejections under 35 U.S.C. § 103(a)**

In the Final Office Action, the Examiner rejected claims 4, 9-12, 24, and 27 under 35 U.S.C. § 103(a) as being unpatentable over Hamid in view of Uchida; rejected claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Hamid in view of Wong et al., U.S. Patent No. 6,260,021 (hereinafter “Wong”); rejected claims 7 and 8 under 35 U.S.C. § 103(a) as being unpatentable over Hamid in view of Kuth, U.S. Patent No. 6,684,093 (hereinafter “Kuth”); rejected claims 13 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Hamid in view of Uchida and in view of Wong; rejected claim 14 under 35 U.S.C. § 103(a) as being unpatentable over Hamid in view of Uchida and in view of Kuth; and rejected claim 22 under 35 U.S.C. § 103(a) as being unpatentable over Uchida in view of Wong.

Applicants respectfully traverse these rejections. The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (B.P.A.I. 1979). To establish a *prima facie* case, the Examiner must show that the combination includes all of the claimed elements, *and* also a convincing line of reason as to why one of ordinary skill in the art would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex parte Clapp*, 227 U.S.P.Q. 972 (B.P.A.I. 1985). Moreover, the Supreme Court has recently stated that the obviousness analysis should be explicit. *See KSR Int'l Co. v. Teleflex, Inc.*, 82 U.S.P.Q.2d 1385 (U.S. 2007) (“[R]ejections based on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

*Independent claims 9, 24, and 27*

Independent claims 9, 24, and 27 were all rejected based on the combination of Hamid (primary reference) and Uchida (secondary reference). However, independent claims 9, 24, and 27 all generally recite logging the user into the system. As discussed above, Hamid is deficient with regard to at least this feature. Further, while the Uchida reference (and the secondary references of the other rejections) may disclose certain systems or medical systems, there is no appropriate reason to modify Uchida to incorporate the feature of logging a user into a system. In addition, the rejected dependent claims are patentable for at least the reason of their dependency on an allowable base claim. Accordingly, Applicants respectfully request withdrawal of the rejections under § 103.

**Conclusion**

Applicants respectfully submit that all pending claims should be in condition for allowance. However, if the Examiner believes certain amendments are necessary to clarify the present claims or if the Examiner wishes to resolve any other issues by way of a telephone conference, the Examiner is kindly invited to contact the undersigned attorney at the telephone number indicated below.

Respectfully submitted,

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